IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.1.2006

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THE HON'BLE MR. JUSTICE E. DHARMA RAO

W.P.NO.917 of 2001

K. Mani ...Petitioner
Madurai 22.

Vs.

1.District Revenue Officer
Madurai.
2.Special Commissioner and
Commissioner of Revenue
Administration, Chepauk,
Chennai-5. ..Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue Certiorarified Mandamus calling for the records relating to the proceedings of the second respondent in D.Dis.RA.V(1) 27571/2000 (AA.54/2000) dated 14.11.2000 and quash the same and direct the first respondent to grant the licence to possess smooth bore mazzle loading gun to the petitioner.

For Petitioner : Mr.V.Ramesh
for Mr.K.Sukumaran
For Respondents No.1 & 2: Mr.E.Sampath Kumar
Additional Government Pleader (Writs)

ORDER

This writ petition has been filed by the petitioner against the order of the second respondent in D.Dis.RA.V(1) 27571/2000 (AA.54/2000) dated 14.11.2000 and for a direction to the first respondent to grant licence to possess SBML gun for self/crop/cattle protection.

2. The facts-in-brief leading to the filing of this Writ Petition are as follows:

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a. The petitioner, who is an agriculturist, is raising cash crops in his lands to an extent of 8 acres. He resides with his family in the farm-house, which is situated far away from the main road. He is also nurturing cattle and goats. As there is danger from the wild animals to his crops and family members, on 3.6.1999, he applied for a gun licence under Section 3 of the Arms Act, 1959, for possessing a smooth bore muzzle loading gun for bona fide crop protection. The first respondent, who received the application, called for remarks.

b. Though the Tahsildar and the local police recommended for grant of licence, the Superintendent of Police did not recommend for grant of licence. On the basis of the recommendations, the first respondent, by his proceedings No.N.K.No.C2/72082/99 dated 28.3.2000, rejected the claim of the petitioner.

c. As against the rejection of the application, the petitioner preferred an appeal before the second respondent, who dismissed the appeal by his proceedings No.D.Dis.RA.V(1) 27571/2000(AA.54/2000), dated 14.11.2000.

3. Aggrieved by the dismissal of the appeal, the petitioner has come forward with this Writ Petition.

4. In the counter filed by the respondents, it is stated that arms licence can be granted only if the licence issuing authority is fully satisfied with the antecedents and genuineness of the petitioner's claim and as there were no substantial reasons, the application of the petitioner was rejected and therefore, it is not correct to aver that the impugned order was passed against Section 14 of the Arms Act. It is also stated in the counter affidavit that the common practice to save the crops from wild animals attack is by using firecrackers and torching woods. The killing of birds and animals is illegal and is against the provisions of the Wild Life Preservation Act.

5. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

6. The learned counsel for the petitioner would contend that when there is a provision of law for granting licence to possess SBML gun for self/crop/cattle protection, the rejection of the appeal filed by the petitioner on the ground that crop/cattle protection does not require a gun, is against law and therefore, the order of the second respondent has to be set aside.

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7. Per contra, the learned Additional Government Pleader would contend that when the petitioner does not prove the damages caused to crops by the wild animals or any threat by wild animals, there is nothing wrong in the order passed by the second respondent especially when the Superintendent of Police was against the petitioner's claim.

8. On a perusal of the impugned order, it reveals that the appellate authority, after carefully examining the appeal and perusing the connected records, was of the view that there is no necessity for the appellant to possess SBML Gun for crop/cattle/self protection and that crop/cattle protection also does not require a gun.

9. As rightly contended by the learned counsel for the petitioner, the view taken by the appellate authority is against the provisions under sub-section 3 to Section 13 of the Arms Act, 1959, which reads as under:

> "(3) The licensing authority shall grant -
>
> (a) a licence under Section 3 where the licence is required-
>
> (i) by a citizen of India in respect of a smooth bore gun having a barrel of not less than twenty inches in length to be used for protection or sport or in respect of a muzzle loading gun to be used for bona fide crop protection:"

10. When the above said provision says that the licensing authority shall grant licence to possess gun, if the same is to be used for bona fide crop protection, the licensing authority cannot refuse the same on the ground that crop/cattle protection does not require a gun and therefore, this Court is of the view that the order of the second respondent is quite contrary to the said provision of law and therefore, it is liable to be set aside. Accordingly, the order of the second respondent, dated 14.11.2000 is set aside.

11. Further, the petitioner is directed to make a fresh application for grant of licence to possess SBML gun for crop protection, as prescribed by law, to the respondents. On receipt of such application, the respondents are directed to consider it and pass orders on merits and in accordance with law.

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With the above direction, the Writ Petition is allowed. No costs.

RNB

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.District Revenue Officer
Madurai.
2.Special Commissioner and
Commissioner of Revenue
Administration, Chepauk,
Chennai-5.

+ 1 cc to M/s.K. Sukumaran, Advocate SR No.1701

+ 1 cc to Government Pleader SR No.1945

MM(CO)
SR/11.2.2006

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